S.B.CIVIL SECOND APPEAL NO.314/2001

Shambhu and others.
vs.
Ramesh Kumar Bhati

DATE OF JUDGMENT ::: 10.1.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. MC Bhoot, for the appellants.

Mr. MR Thanvi, for the respondent.

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Heard learned counsel for the parties.

The appellant has challenged the judgment and decree of the first appellate court dated 7.8.2001 by which the first appellate court, after reversing the finding of the trial court on the question of personal bonafide necessity of the plaintiff, decreed the suit of the plaintiff for eviction of the tenant/appellant.

Learned counsel for the appellant submitted that the plaintiff's wife purchased the house and this fact is not in dispute, therefore, the appellate court committed serious error of law in decreeing the suit of the plaintiff on the ground of personal bonafide necessity when his wife purchased the property, which, according to the appellant, has been purchased in the name of wife and sister of the plaintiff and in fact, the property was purchased by the

plaintiff.

I have considered the submissions of learned counsel for the appellants and perused the reasons given by the courts below.

It is clear from the facts that the plaintiff was residing with his father and the plaintiff's father was residing in the rented house. The said house itself was purchased by the wife and sister of the plaintiff. The fact remains is that the plaintiff is residing with his father in the said house which has been purchased by the wife and sister of the plaintiff and which was earlier on rent in the tenancy of the plaintiff's father. However, the accommodation in this house is only one room and one kitchen whereas the plaintiff's family members were seven at the relevant time, therefore, the plaintiff's need cannot be said to be lacking in bonafides in any manner. The first appellate court, after appreciation of all the facts and after considering the evidence, recorded finding of fact which cannot be interfered by this Court in second appeal.

In view of the above, no substantial question of law arises in this appeal, therefore, this appeal deserves to be dismissed.

At this stage, learned counsel for the appellants prayed that the appellants are old tenants, hence, they may

be given two years' time to vacate the suit premises so that they can make alternate arrangement, for which learned counsel for the respondent has serious objection.

Looking to the totality of the facts, in the interest of justice, one year's time is granted to the appellant to vacate the suit shop.

Therefore, it is ordered that in case, the appellants furnish a written undertaking before the trial court within a period of one month that he shall hand over the vacant possession to the landlord by or before 31.12.2006, shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.1.2007. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court.

In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya